IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Heera Lal Vs. Mandir Shri Thakurji Sangria and another

S.B.CIVIL SECOND APPEAL NO.126/1987
Against the judgment and decree dated 11.9.1987 passed by the Addl.District Judge No.1, Hanumangarh camp Sangria in Civil Appeal No.16/1983 against the judgment and decree dated 19.5.1983 passed by the Munsif, Sangria in Civil Suit No.23/1980.

Date of Judgment : 14th March, 2005

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Vijay Bishnoi, for the appellant
Mr.Varun Goyal for the respondents

Reportable BY THE COURT:

The defendant-tenant has filed this second appeal against the judgment and decree dated 11.9.1987 passed by the Addl.District Judge No.1 Hanumangarh camp Sangria in Civil appeal No.16/1983 whereby the learned Judge dismissed the appeal filed by the appellant and maintained the decree for eviction dated 19.5.1983 passed by the Munsif, Sangria in Civil Suit No.23/1980.

This appeal was admitted on 1.12.1987 while formulating the following as substantial questions of law involved in this appeal:-

> (1) Whether the learned trial court has committed error in striking out the entire defence of the defendant appellant for not depositing the rent of the subsequent month of March, 1981?
>
> (2) Whether the findings of the learned lower courts on the reasonable and bonafide necessity are perverse?
>
> (3) Whether the findings of the learned lower court are not in accordance with the provisions of Section 14(2), Rajasthan Premises (Control of Rent & Eviction) Act, 1950?
>
> (4) Whether the learned lower courts erred in holding that the provisions of sub section (5) of Section 13 are mandatory in nature?

The Questions No.1 and 4 aforesaid relate to the aspect of striking out of defence of the defendant-appellant whereas Question No.2 relates to the finding on the ground of eviction of reasonable and bonafide reqirement while Question No.3 relates to the consideration of comparative hardship and partial eviction.

Brief facts relating to the suit and the proceedings in the suit could be summarised thus: The plaintiffs-respondents filed the suit for eviction, recovery of arrears of rent and mesne profits with the averments in the plaint that in Ward No.2 of Sangria, shops of plaintiff No.1 were situated which were looked after by “Panchayati

Mandir Prabandhak Samiti" of which plaintiff No.2 was the Chairman. From out of these shops the defendant has taken on rent the shop No.8 from 1.2.1975 at the rent of Rs.80/- per month and thereafter the defendant took the shop for a fixed period of 1.7.1978 to 31.3.1979 at the rent of Rs.85/- per month and executed the rent note to that effect. Eviction was claimed on the grounds that: (a) the defendant has paid rent of 20 ½ months upto 15.10.1976 amounting to Rs.1640/- on 19.7.1978 under receipt but the defendant has neither tendered nor paid the rent from 16.10.1976 to 30.6.1978 at the rate of Rs.80/- per month and from 1.7.1978 at the rate of Rs.85/- per month and hence the defendant has violated the provisions of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (hereinafter referred to as `the Act'); (b) apart from the aforesaid ground of default, the plaintiff further averred that in the building,a school for imparting Sanskrit education was running upto "Praveshika" standard but the school was not having complete accommodation and now as the level of education was being raised to a college, the accommodation for that purpose was insufficient and to meet with the requirement of accommodation, the shop in question was required reasonably and bonafide. Two shops of the plaintiffs have already been got vacated for the said purpose and legal proceedings were on way for obtaining eviction regarding other

shops. The plaintiffs also suggested comparative hardship by alleging that they were not having any other place to start Sanskrit College nor any proper place was available in Mandi Sangria. Making other averments regarding service of notice under Sec.106 of Transfer of Property Act, the plaintiffs claimed the rent from 16.10.1976 to 30.6.1978 at the rate of Rs.80/- per month amounting to Rs.1640/- and from 1.7.1978 to 31.3.1979 at the rate of Rs.85/- per month amounting to Rs.675/- per month and mesne profits from 1.4.1979 to 30.9.1979 of Rs.510/-. The plaintiffs prayed for a decree for eviction and for arrears of rent and mesne profits.

The defendant filed his written statement denying the claim of the plaintiff and stated that the said shop No.8 was on rent with him from the year 1969 at the rate of Rs.50/- per month and uptil 31.1.1975 he had been making payment of rent at the rate of Rs.50/- per month. Thereafter, despite repeated tendering, the plaintiff did not accept the rent with the oblique intention of enhancing the rent contrary to the law and several times the rent was sent by money orders which were refused. Pointing out certain disputes between the parties arising because of obstruction in the use of the premises, the defendant submitted that the receipt of Rs.1640/- was wrongly given stating it to be the rent of the period 1.2.1975 to 15.10.1976 by

which he noticed that the rent of Rs.80/- per month was charged by the plaintiffs which was never agreed upon. The plaintiffs could not have recovered more than Rs.50/- per month as rent and therefore, the defendant on 31.7.1978 made an application under Sec.19A of the Act pointing out that the rent from 1.2.1975 to 31.7.1978 would be Rs.2100/- for 42 months at the rate of Rs.50/- per month. Out of this, the plaintiff has already received the amount of Rs.1640/- on 19.7.1978 and therefore the remaining amount of Rs.460/- was deposited in the court. Thereafter, further deposits made under Sec.19A of the Act were also referred and it was pointed out that the rent upto 31.10.1979 was deposited and from 1.11.1979 the rent was due at the rate of Rs.50/- per month which the defendant was ready to deposit upon determination by the court under Sec.13(3) of the Act. The defendant denied the grounds of default and reasonable and bonafide requirement and prayed for dismissal of the suit.

After filing of the written statement by the defendant-appellant, the learned trial court took up the matter for provisional determination of rent on 16.3.1981. The learned court on the basis of material on record determined the amount of rent from 16.10.1976 to 30.6.1978 at Rs.1640/- and thereafter from 1.7.1978 to 28.2.1981 at Rs.2720/- on which interest was calculated at the rate of

6% per annum amounting to Rs.307.42. In all, an amount of Rs.4667.42 was determined from which Rs.1210/- allegedly deposited by the tenant were ordered to be adjusted and defendant-tenant was directed to make payment of the remaining amount of Rs.3457.42 within one month and was also directed to make payment of the rent at the rate of Rs.85/- per month from 1.3.1981 within the time prescribed by law.

The defendant thereafter moved an application on 20.4.1981 expressing difficulties being faced by him in arranging for the amount of Rs.3457.42 and prayed for further time for making payment. This application was granted by the court on 20.4.1981 itself and the defendant was allowed time upto 30.5.1981 for payment. However, thereafter the defendant moved an application on 15.5.1981 seeking to deposit the rent for the month of March, April and May and prayed for orders permitting such deposit. This application moved on 15.5.1981 was opposed by the plaintiffs with the contention that the rent for the month of March was not tendered within time as required by Sec.13(4) of the Act. The counsel for the plaintiffs refused to accept rent of the month of March and accepted the amount of Rs.170/- towards rent for the month of April and May only.

The defendant of course moved an application on 22.5.1981 and deposited the rent for the month of March, 1981 on 29.5.1981. On the next day, i.e. 30.5.1981, the defendant made payment of the determined amount of Rs.3457.42 to the counsel for the plaintiffs.

On 27.7.1981, the plaintiffs moved an application with the submissions that the defendant has defaulted in making payment of the rent for the month of March within time and therefore, the defence against eviction be struck out. This application was allowed by the trial court on 19.8.1981 for the reason that the rent for the month of March, 1981 was tendered only on 15th day of May, 1981 and therefore, the rent having not been deposited as required by Section 13(4) of the Act, the defence against eviction was struck out under Sec.13(5) of the Act. On this day, the defendant moved yet another application seeking amendment in the written statement which was allowed by the court on 25.8.1981. An amended written statement was filed on 7.9.1981 in which the defendant added the ground that the alleged Panchayati Mandir Prabandhak Samiti was not registered under the Rajasthan Societies Registration Act and hence the suit was not maintainable. In the meantime, an appeal was taken before the Addl.District Judge No.1 Hanumangarh against the

order dated 19.8.1981 striking out the defence of the defendant-appellant. This appeal was dismissed by the appellate Judge on 29.5.1982. In the suit proceedings, following issues were framed by the learned trial court:-

1- आया वादी को विवादित परिसर दूकान की युक्ति युक्त एवं सदभावी आवश्यकता है । परिसर खाली नहीं होने पर वादी को अधिक दुविधा होगी ।

2- आया वादी प्रतिवादी से किराया मीन प्रोफिटस के 2915 रूपया व भविष्य में भी 85 रूपये माहवार की दर से मीन प्रोफिटस प्राप्त करने का अधिकारी है ।

3- आया वादी दावा करने का अधिकारी नहीं है ।

4- अनुतोष ।

The plaintiffs examined one witness namely Surajbhan on 10.2.1983 and closed the evidence. The matter was thereafter posted for defendant's evidence on 4.3.1983 on which date it was adjourned again for defendant's evidence on 18.3.1983.

On this adjourned date of 18.3.1983, the defendant Hiralal was present before the court as seen from his signatures put on the margin of the order-sheet. The learned Judge recorded that defendant did not wish to lead evidence. The defendant's evidence was closed and the matter was posted for arguments on 11.4.1983

and after hearing the parties, the learned trial Judge proceeded to decide the suit on 19.5.1983.

The learned Judge after referring to the uncontroverted testimony of the plaintiff Surajbhan decided issue No.1 relating to reasonable and bonafide requirement and so also comparative hardship in favour of the plaintiff. Regarding issue No.2, the learned Judge found that Kabuliyatnama Ex.1 has been proved on record which shows the rate of rent to be Rs.85/- per month which has not been challenged even in cross-examination nor any evidence in rebuttal thereof has been produced. Therefore, this fact remains more or less undisputed that the rent was Rs.85/- per month. An application was moved by the counsel for the plaintiffs on 13.5.1983 that they had received the rent except for the month of March, 1981 and April, 1982 and no orders were required for payment of the remaining amount. The learned trial court therefore ordered that the rent for these months of March, 1981and April, 1982 deposited in the court may be received by the plaintiff. (The copy of challan available on record relating to the rent of the month of April, 1982 shows that the said amount was tendered and deposited on 19.5.1982 only). Issue No.3 relating to the competence of the plaintiff to maintain the suit was also decided in favour of the

plaintiff. While considering the question of relief, the learned Judge found that the grounds of eviction as envisaged by Section 13(1)(a) and (h) of the Act were established and therefore the learned trial court passed the decree for eviction of the defendant from the suit shop with further direction of entitlement of the plaintiffs to receive mesne profits at the rate of Rs.85/- per month till recovery of possession.

The defendant-tenant preferred an appeal against the judgment and decree dated 19.5.1983 passed by the learned trial court. The learned Appellate Judge endorsed the findings on all the issues and dismissed the appeal maintaining the eviction decree passed by the trial court. Against the judgment and decree dated 11.9.1987 passed by the learned Appellate Judge, the tenant has filed this appeal which has been admitted while formulating aforesaid questions of law.

The learned counsel for the appellant strenuously contended that provisions of Sec.13(5) of the Act are not mandatory and therefore the learned trial court has erred in striking out the defence on one default concerning the month of March, 1981. The learned counsel submitted with reference to the Full Bench decision of this Court in the case of Vishandas Vs. Savitri Devi :1988 (1) WLN 240

and decision of the Hon'ble Supreme Court in the case of B.P.Khemka (P) Ltd. Vs. Birendra Kumar Bhowmick : AIR 1987 SC 1010 that provisions of Section 13(5) are not mandatory and it was not incumbent for the court to have struck out the defence in all the cases and the delay ought to have been condoned in the peculiar facts and circumstances of this case. The learned counsel further submitted with reference to the decision in the case of Desjraj Vs. Om Prakash & another : 1987(1) RLR 244 that whole of the defence could not be struck out and the defendant ought to have been permitted to lead evidence on other issues. The learned counsel further submitted that the evidence as produced by the plaintiff is not enough for a finding on the ground of eviction of reasonable and bonafide requirement in favour of the plaintiffs and the learned courts below have not considered the aspect of comparative hardship as required by law.

Per contra, learned counsel for the respondents submitted that the issues sought to be raised by the appellant stand concluded by the later decision of the Hon'ble Supreme Court in the case of Nasiruddin and others Vs. Sita Ram Agarwal : (2003) 2 SCC 577 in which the Hon'ble Supreme Court has laid down that the court has no power under the Act of 1950 to extend the period for deposit of the

rent beyond the statutory period as provided in the Act itself and Section 5 of the Limitation Act is not applicable in case of default in depositing the rent under Sec.13(4) of the Act. The learned counsel submitted that the ratio of the Full Bench decision of this Court stands overruled by the decision of the Hon'ble Supreme Court in the case of Nasiruddin and others (supra). The defence was rightly struck off and therefore the decree for eviction deserves to be maintained. The learned counsel also submitted that findings on reasonable and bonafide requirement and comparative hardship have rightly been arrived on the basis of uncontroverted evidence of the plaintiff and call for no interference.

Having given a careful consideration to the rival submissions and having scanned through the entire record, this Court is of opinion that the formulated Questions No.2 and 3 deserve to be answered in the affirmative, the finding of reasonable and bonafide necessity remains perverse and the learned courts below have not recorded findings in accordance with the requirements of Sec.14(2) of the Act. However, regarding Questions No.1 and 4, in view of admitted default in payment of the rent for the month of March, 1981, the order of striking out of defence remains legal and justified. Moreover, in view of another default in payment of the rent for the month of

April, 1982 beyond the statutory period of 15 days after the expiry of the month of tenancy, the appellant would not be entitled for any benefit under Sec.13(6)of the Act. So far the question of striking out of entire defence is concerned, the same is of no relevance for the conduct of the appellant himself. With these answers, the appeal deserves to be dismissed.

Taking up the question of reasonable and bonafide necessity as involved in Question No.2 first, it is found that the plaintiff has vaguely pleaded its case for the alleged requirement in rather casual and cursory manner with averments that there was insufficient accommodation and there was a need for additional accommodation with the expansion of the level of education in their institution but no particulars have been stated to show that the need as suggested by them is reasonable as well as bonafide. The so-called evidence on this ground of eviction is still more sketchy and superficial, to say the least. The plaintiff has stated that they were to establish Sanskrit College, therefore, getting the shops vacated. Then it has been cursorily stated that the main reason for getting the shop vacated was that Sanskrit College was opened and secondly that he (tenant) was not paying rent also. It is true that the defendant has not cross-examined the plaintiff on these aspects as the entire cross-

examination has been diverted towards the question of registration of samiti and its membership etc., however, the examination-in-chief of the plaintiff makes out only that some idea concerning the Sanskrit Mahavidhyalaya was in the offing for which they were seeking eviction of the tenants.

It is well to remember that under Section 13(1)(h) of the Act, whether the landlord claims requirement for use and occupation of himself or his family, or for the use and occupation of any person for whose benefits the premises are held, or for public purpose, or philanthropic use; such requirement has to be reasonable and bonafide. The term `requirement' is not akin to a`desire'. As explained by the Hon'ble Supreme Court in the case of Shiv Sarup Gupta Vs. Dr.Mahesh Chand Gupta : (1999) 6 SCC 222, the degree of intensity contemplated by the word "required" is much higher than in mere desire. The Hon'ble Supreme Court explained,-

> "Thus the term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by "requires" is much more higher than in mere desire. The phrase "required bona fide" is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need

> which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the court."
>
> The Apex Court cautioned,-
>
> "In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against."

The test to be employed by the courts as laid down in the case of Ram Dass Vs. Ishwar Chander : (1988) 3 SCC 131 and as reiterated in Shiv Sarup Gupta's case (supra) remains thus:-

> "The need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a 'requirement' in law must have the objective element of a 'need'. It must also be such that the court considers it reasonable and, therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down."

When seen in the light of the principles for judging the reasonable and bonafide requirement, it is apparent in the present case that the plaintiff-landlord has made cursory and vague pleading suggesting that since the accommodation for institution was insufficient, therefore, the suit premises were required. In the deposition before the court, the plaintiff has only stated that as they were to establish Sanskrit College, therefore, getting the shops vacated and that the main reason for seeking eviction was that the plaintiff has established a Sanskrit college and that tenant was not making payment of the rent. Nothing else has been placed before the court so as to enable it to come to conclusion that the need put forward by the landlord was a "requirement" in law and that the requirement was reasonable as well as bonafide. It is of course true that the landlord was not to explain as to why they want to set up the college or to extend it, but then, the relevance of the suit premises vis-a-vis the alleged requirement was definitely required to be shown. The landlord-plaintiff has chosen not to state if the suit premises were of any obstruction or interference in establishment of such college nor the extent of available premises and the extent of further requirement has been placed so as to satisfy the court of the presence of objective element in the professed need so as to become

a requirement in law. While judging reasonable and bonafide requirement, the court could not have proceeded on assumptions regarding the state of facts. No material whatsoever has been placed on record by which the court could have been satisfied that the alleged need was natural, real, sincere and honest. Merely because the defendant did not lead any evidence, the plaintiff was not relieved of the burden of proving the alleged need to be a reasonable and bona fide requirement. Both the courts below have not even addressed to the requirement of law for a positive finding on this ground of eviction under Sec.13(1)(h) of the Act. and merely the want of evidence on the part of defendant has been taken to be a final answer to the question of reasonable and bonafide requirement. The findings on the question of reasonable and bonafide requirement by both the courts below are perfunctory, are based on no evidence and are perverse. Such findings cannot be sustained. Question No.2 is answered in the affirmative.

Taking up Question No.3 regarding the requirements of Section 14(2) of the Act, it may be pointed out in the first place that when finding on reasonable and bonafide necessity cannot be sustained, as found hereinabove, the consideration of requirements of Section 14

(2) would not even arise and Question No.3 becomes redundant. However, for clarification, it may be pointed out that even on this aspect, the learned courts below have grossly erred in law.

A decree for eviction on the ground of reasonable and bonafide requirement cannot be passed even if the ground of requirement as contemplated by clause (h) of Sec.13(1) of the Act is established before satisfying two more requirements of law. Sub-section (2) of Section 14 of the Act enjoins a duty upon the court to consider before granting a decree for eviction on the ground as contained in Sec.13(1) (h) of the Act to consider after taking together all the circumstances of the case, including availability of other reasonable accommodation to the landlord or the tenant that, if greater hardship would be caused by passing the decree than by refusing to pass it? This test is commonly referred as doctrine of comparative hardship. Further, second paragraph of Section 14(2) requires consideration of the question of feasibility of partial eviction to satisfy the alleged need.

As noticed above, the plaintiff – landlord came out in this case with vague pleadings on the facts constituting reasonable and bonafide requirement and with utmost generalised pleadings regarding the comparative hardship. Significantly, whatever

pleadings that were made in the plaint regarding hardship, not even a remote whisper has been made in this regard by the only witness of the plaintiff so as to provide the court with any material to judge the comparative hardship. The learned trial court has considered the question of comparative hardship in issue No.1 itself and concluded that the evidence of the plaintiff for greater hardship has remained unrebutted. The learned appellate Judge has separately considered the question of comparative hardship and observed that the appellant has not shown as to what hardship would be suffered by him, and therefore, his contention of greater hardship cannot be accepted. A bare perusal of statement of PW-1 Surajbhan shows it clearly that the plaintiff himself has not stated anything towards this aspect of comparative hardship and it was improper on the part of the learned trial Judge to say that evidence of the plaintiff for greater hardship has remained uncontroverted. The perverse finding of the trial court on this question of comparative hardship was specifically challenged by the appellant before the first appellate court and it was clear before the first appellate court that plaintiff has not made any statement in evidence on the question of comparative hardship. However, the learned appellate Judge has rejected the contention of the appellant on the consideration that the defendant-appellant did not lead any evidence to establish the element of hardship in his favour.

Such an approach by the learned Appellate Judge is obviously

erroneous. When there was no material available on record for weighing the comparative hardship or even to draw an inference in favour of the plaintiff, the learned Appellate Judge was in error in affirming the finding of comparative hardship by referring to the want of evidence of the tenant. There is no further consideration by the courts on the question of partial eviction at all. .

It is evident that the judgment and decree by both the courts below do not conform to the requirements to the Section 14(2) of the Act so far the decree for eviction on the ground of Section 13(1)(h) is concerned. The Question No.3, therefore, is also answered in the affirmative.

With answer to Questions No.2 and 3 in the affirmative, the findings on issue No.1 are set aside and this issue is decided against the plaintiff.

Before considering Questions No.1 and 4, it is relevant to point out that even though the defence against eviction of the defendant was struck out by the order dated 19.8.1981 (which was

also affirmed in appeal on 29.5.1982), yet the learned trial court neither disallowed the cross-examination of the plaintiff's witness nor put any restriction or limitation on the evidence of the defendant. On the contrary, it is found that after the closure of the evidence of the plaintiff, the case was specifically fixed for defendant's evidence on 4.3.1983 and adjourned for this very purpose to 18.3.1983. However, on 18.3.1983, the defendant has positively given out before the court that he was not seeking to produce any evidence and got the evidence closed. The submission sought to be made in the present memo of appeal that he was not allowed to lead evidence remains contrary to record. The grievance sought to be raised by the appellant in Question No.1 that entire defence against eviction was struck out is, therefore, unfounded and this part of the question becomes wholly redundant.

So far the other aspects involved in Questions No.1 and 4 are concerned, the submissions made by the learned counsel for the appellant on the basis of decisions in Vishandas Vs. Savitri Devi and B.P.Khemka's case (supra) cannot be countenanced in view of the decision of the Hon'ble Supreme Court in the case of Nasiruddin and others (supra) putting at rest the entire controversy regarding the scope and operation of the provisions of the sub-sections (3), (4) and

(5) of Section 13 of the Act.

With the principles laid down and explained by the Hon'ble Supreme Court in Nasiruddin's case (supra), it is no more res integra that the requirements of sub-section (4) of Section 13 are imperative and the court has no power to extend the time for deposit beyond the statutory period of three months in respect of the determined amount and fifteen days in respect of monthly rent. Section 5 of the Limitation Act does not apply when there is a default in depositing the rent by the tenant under Sec.13(4) of the Act. The relevant sub-sections 3 to 7 of Section 13 read as under :-

> "(3) In a suit for eviction on the ground set forth in clause (a) of Sub-section (1) with or without any of the other grounds referred to in that sub section, the court shall, on the first date of hearing or on any other date as the court may fix in this behalf which shall not be more than three months after filing of the written statement and shall be before the framing of the issues, after hearing the parties and on the basis of material on record provisionally determine the amount of rent to be deposited in court or paid to the landlord by the tenant. Such amount shall be calculated at the rate of rent at which it was last paid or was payable for the period for which the tenant may have made default including the period subsequent thereto upto the end of the months previous to that in which such determination is made together with interest on such amount calculated at the rate of six percent per annum from the date when any such amount was payable upto the date of determination.
>
> Provided that while determining the amount under this sub-section, the court shall not take into account the

amount of rent which was barred by limitation on the date of the filing of the suit.

(4)The tenant shall deposit in court or pay to the landlord the amount determined by the court under sub-section (3) within fifteen days from the date of such determination, or within such further time, not exceeding three months, as may be extended by the court. The tenant shall also continue to deposit in court or pay to the landlord, month by month the monthly rent subsequent to the period upto which determination has been made by the fifteenth of each succeeding month or within such further time; not exceeding fifteen days, as may be extended by the court, at the monthly rate at which the rent was determined by the court under sub-section(3).

(5) If tenant fails to deposit or pay any amount referred to in sub-section (4) on the date or within the time specified therein, the court shall order the defence against eviction to be struck out and shall proceed with the hearing of the suit.

(6) If a tenant makes deposit or payment as required by sub-section (4) no decree for eviction on the ground specified in clause (a) of sub-section (1) shall be passed by the court against him.

Provided that a tenant shall not be entitled to any relief under this sub-section, if having obtained such benefit or benefits under section 13-A in respect of any such accommodation if he again makes a default in the payment of rent of that accommodation for six months.

(7) If in any suit referred to in sub-section (3), there is any dispute as to the amount of rent payable by the tenant, the court shall decide the dispute finally at the time of decision of the suit and may, at that time, pass such orders regarding costs or interest, as having regard to the circumstances of the case, it deems fits."

It may be pointed out that the scheme carved out by the aforesaid provisions was introduced to the Act of 1950 by Rajasthan Ordinance No.26 of 1975 which was later on replaced by Amending Act No.14 of 1976. Before this amendment, the tenant was under an obligation to calculate the arrears of rent and interest payable by him and to deposit the same on the first date of hearing and in case of any dispute, the same was required to be raised on the first date of hearing and thereupon it was for the court to determine the arrears of rent payable and thereafter the tenant was under an obligation to deposit the determined rent and to continue to deposit or pay the monthly rent month by month. Consequences for a tenant not depositing the amount after calculation under sub-section (4) or determined amount under sub-section (5) as the case may be were provided in sub-section (6) that court would order defence against eviction to be struck out. On the other hand, the compliance of sub-section (4) or sub-section (5) as the case may be had the effect of the court not granting the decree for eviction if the tenant had not taken such relief earlier. With the substitution of the aforesaid provisions, the scheme was altered and irrespective of the fact as to whether there was any dispute or not, it was made obligatory for the court to provisionally determine the amount of rent to be deposited in the court or paid to

the landlord together with interest. Such determination was to be made after hearing the parties and on the basis of material onrecord on the first date of hearing or latest within three months after filing of the written statement and necessarily before framing of the issues.

Once the provisional determination was made by the court in accordance with the principles set out in sub-section (3), sub-section (4) of Section 13 came into operation which enjoined the tenant with two fold duties: (i) first, to deposit or make payment of the determined amount within fifteen days or within such further time not exceeding three months as extended by the court; (ii) secondly, the tenant came under obligation to deposit or pay the rent of the subsequent months after determination by the 15th of each succeeding month or within such further time not exceeding 15 days as may be extended by the court. This monthly deposit was to be made at the rate as determined by the court under sub-section (3). Sub-section (5) provided for the consequences of non-compliance by the tenant of deposit or payment of the amount within the time specified that the court would order defence against eviction to be struck out and proceed with the hearing. Sub-section (6) on the other hand conferred benefit on compliance of sub-section (4) to the effect that if the tenant deposited or paid as required by sub-section (4), no decree for

eviction on the ground of default would be passed by the court against him, subject, of course to the proviso that such benefit was not available more than once. The operation of sub-section (6) in practice led to the phrases of “first default” and “second default” or “subsequent default”.

The operation and effect of the aforesaid provisions particularly when dealing with the cases of defaults led to different interpretations by this Court. Without burdening this discussion with the plethora of case law on the subject, suffice it to point out certain specific representative cases, A Division Bench of this Court in the case of Firm Kripa Ram Ganeshi Lal Vs. Vijay Kumar Goyal : 1986 RLW 333, reaffirmed the consistent view hitherto taken by this Court that provisions of sub-section 4 and 5 were mandatory and leave no option for the court but to strike out the defence in case of a default. However, prior to the said decision in Firm Kripa Ram Ganeshilal's case, a question came up before a Division Bench of this Court relating to the applicability of the provisions of Sec.5 of the Limitation Act to the applications filed under the provisions of Sec.13-A of the Act, which provision was introduced providing for a benefit for the limited period of one month to the tenant who in order to avail of such benefit was required to make an application within

30 days of the date of commencement of the Amending Ordinance, 1975(the date being 29.9.1975) and on that application, the court was to determine the amount of rent in arrears with interest at the rate of 6% per annum and costs of suit allowable to the landlord and on payment being made within the time fixed of 90 days, the proceedings for eviction on the ground of default were terminated as if the tenant had not committed any default. The Division Bench in the case of Gopal Dass and others Vs. Nathulal Baraya :AIR 1983 Rajasthan 222 held that as the Act has not excluded expressly the provisions of the Limitation Act, therefore, Section 5 of the Limitation Act would be applicable to the applications filed under Sec.13-A. However, this decision in Gopal Dass's case related only to an application under Sec.13-A of the Act and obviously therefore, uptil the case of Firm Kripa Ram Ganeshilal's (supra), so far the provisions of Section 13(4) and (5) were concerned, they were continued to be interpreted by this Court on their plain language holding that for the tenant it was incumbent to timely comply with the requirement of sub-section (4) of Section 13 and in case of default extension of time was available only upto the statutory period provided in sub-section (4) itself i.e. maximim three months for the determined amount and fifteen days for the monthly rent.

However, after the decision of Firm Kripa Ram Ganeshilal's case (supra), the Hon'ble Supreme Court delivered judgment in the case of B.P.Khemka (P) Ltd. Vs. Birendra Kumar Bhowmick : AIR 1987 SC 1010 which was concerning the provisions of West Bengal Premises Tenancy Act and the Hon'ble Supreme Court interpreted the provisions of sub-section (3) of Section 17 of the said West Bengal Act in the manner that the words "shall" occurring therein for striking out of the defence were required to be construed as directory and not mandatory. Although the provisions of the West Bengal Act were different but in view of the principles emanating from B.P.Khemka (P) Ltd., the questions cropped up before this Court as to whether the provisions of Sec.13(5) of the Rajasthan Act 1950 were directory and as to whether the court has power in the interest of justice and equity to extend the time beyond the time prescribed under sub-section (4) of Sec.13 and whether for that purpose, the provisions of Sec.5 of the Limitation Act could be applied? The debate on these questions led to the Full Bench reference in the case of Vishandas Vs. Savitri Devi : AIR 1988 Rajasthan 198.

In Vishandas Vs. Savitri Devi (supra), the Full Bench of this Court referred to the decision of the Hon'ble Supreme Court in

B.P.Khema's case (supra) and on its basis concluded that the Division Bench decision in Firm Kripa Ram Ganeshilal's case (supra) ceased to be a good law. While dealing with the questions placed before it, the Full Bench of this Court also referred to the views expressed in Gopal Dass's case (supra) and expressed agreement with that view and therefore the Full Bench ruled that the provisions of Sec.5 could be applied in the matter of deposit of rent under Sec.13 (4), that the court has power in the interest of justice and equity to extend the time beyond the statutory limit, and that the provisions of Sec.13(5) of the Act were directory and not mandatory. The said decision in the case of Vishandas continued to hold field for a long time and it was accepted that the court had the power to extend the time beyond the statutory period provided under sub-section (4) of Section 13 and invariably the provisions of Sec.5 of the Limitation Act were applied to condone the delay and to condone the default.

However, the foundations of the reasonings of the Full Bench in Vishandas's case (supra) were based on two decisions, one in B.P.Khemka (P) Ltd by the Hon'ble Supreme Court which related to West Bengal Tenancy Act and the other in Gopal Dass by this Court which applied Section 5 of the Limitation Act to a special provision of Section 13-A of the Act. Direct application of principles

emanating from both the decisions in B.P.Khemka (P) Ltd and Gopal Dass to Section 13(4) & (5) of the Act remained in doubt. This doubt was expressed by a Single Judge of this Court particularly pointing out that the decision of the Hon'ble Supreme Court in B.P.Khemka (P) Ltd and so also various other cases, all related to different rent control statutes of different States and the provisions in those cases were not similar to the provision of the Act of 1950, the peculiar feature being that in sub-section (4) of Sec.13 of the Act, the legislature has specifically provided the time for deposit and so also extendable time for deposit.

The doubts expressed by the learned Single Judge of this Court in the case of Sita Ram Agarwal Vs. Nasiruddin and others led to another Larger Bench reference this time to re-consider the ratio in the judgment of Vishandas Vs. Savitri Devi. A Larger Bench of five Hon'ble Judges of this Court returned a split answer to the controversy. While the majority of three Hon'ble Judges re-affirmed the view in Vishandas Vs. Savitri Devi holding that the applicability of Sec.5 of the Limitation Act could not be ruled out unless the non-application thereof was clearly provided in the statute and by virtue of Section 29(2) of the Limitation Act, the majority also ruled that in appropriate cases, the court has power to condone the delay and

permit the tenant to deposit the rent beyond the statutory prescribed period. In the said Full Bench decision of Sita Ram Agarwal Vs. Nasiruddin and others : 1998(1) WLC Rajasthan 325 however, the minority of two Hon'ble Judges of this Court expressed the views against the applicability of Section 5 of the Limitation Act. Therein also, the learned Judges holding the minority view of non-applicability of Section 5 of the Limitation Act expressed different views so far the applicability of Section 148 of the Code of Civil Procedure for enlargement of time was concerned.

The debate, therefore,so far as this Court was concerned, culminated yet again in favour of the view as expressed in Vishandas's case (supra) that Section 5 of the Limitation Act could be applied and delay and default could be condoned. However, the decision of the Full Bench in Sita Ram Agarwal Vs. Nasiruddin and others (supra) was questioned before the Hon'ble Supreme Court and the Division Bench of the Hon'ble Apex Court referred the matter to a three Judges Bench looking at the importance of the question and conflicting views. That is how the decision was rendered by the Hon'ble Supreme Court in Nasiruddin and others Vs. Sita Ram Agarwal : (2003) 2 SCC 577.

The Hon'ble Supreme Court has expressly held the view expressed by the majority of the Full Bench of this Court in Sita Ram Agarwal Vs. Nasiruddin and others (supra) to be unsustainable and has set it aside. The Hon'ble Supreme Court after referring to the wordings of sub-section (4) of Section 13 observed,-

> "13. The word "shall", which is ordinarily imperative in nature, has been used in sub-section (4) of Section 13. The power of the court has also been limited to the extent that it can extend time for such deposit not exceeding three months and so far as the deposit of monthly rent is concerned, by fifteen days. The court's power, therefore, is restricted. In case the tenant deposits the provisional rent as determined by the court within the stipulated period the tenant is relieved by the eviction decree."

The Hon'ble Supreme Court further referred to the decisions of the Supreme Court dealing with different rent legislations of Madhya Pradesh, Delhi, Bihar and West Bengal which were relied upon by this Court in Sita Ram Agarwal's case (supra) and all were distinguished being not applicable to our case because of specific provision peculiar to each such rent legislation.

The Hon'ble Supreme Court concluded in no uncertain terms,-

> "41. In that view of the matter it must be held that in absence of such provisions in the present Act the Court did not have the power to either extend the period to deposit the rent or to condone the default in depositing the rent."

The Hon'ble Supreme Court also ruled against the applicability of provisions of Sec.5 of the Limitation Act and held that Section 5 is not applicable where there is a default in depositing the rent by the tenant under Sec.13(4) of the Act. The assumed harshness of the provisions cannot be pressed as a ground for an interpretation different than the plain language of the provision. As quoted with approval by the Hon'ble Supreme Court in Nasiruddin's case (supra), the Hon'ble Supreme Court in E.Palanisamy Vs. Palanisamy: (2003) 1 SCC 123 has held,-

> "The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters."

The Hon'ble Supreme Court also pointed out another well settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be

mandatory but when a public functionary is required to perform a public function within the time frame, the same will be held to be directory unless the consequences therefor are specified. The Hon'ble Supreme Court has also pointed out the principles of statutory interpretation that a statutory direction to private individual is generally considered as mandatory while rule is opposite to that which obtains with respect to public officers. A mandatory or directory construction to a statutory provision may be determined by an expression in the statute itself of the result that shall follow for non-compliance.

In nutshell, it could be concluded that the stream of a line of view that Sec.5 of the Limitation Act could be applied and delay could be condoned in default of the compliance of Sec.13(4) of the Act even beyond the statutory period fixed by the said provision itself which was built on the basis of B.P.Khemka(P) Ltd.,'s case and Gopal Dass's case (supra), has travelled a full circle culminating into the authoritative pronouncement by the Hon'ble Apex Court in Nasiruddin's case (supra). The controversy having met with its quietus in Nasiruddin's case (supra), this Court is clearly of opinion that the principles as seen from the Division Bench decision of Firm Kripa Ram Ganeshilal's case (supra) now hold the field, the ratio of

all decisions to the contrary having been overruled in toto by Nasiruddin's case. Therefore, it is evident that court has no power to extend the period for deposit of the rent under Sec.13 of the Act nor to condone the default in depositing the rent as there are no provisions in the Act granting such powers to the court.

In the present case, so far the default is concerned, it is not in dispute that appellant has failed to deposit the rent for the month of March, 1981 within 15 days of the next month i.e. 15.4.1981. He failed to deposit this rent even within the further time of 15 days extendable by the court i.e. by 30.4.1981, if at all any bonafide cause for extension was given out. The tenant in fact made the first tender only on 15.5.1981 and the counsel for the plaintiff specifically refused to accept the rent for the month of March, 1981, the tenant being in default. This amount was deposited in the court only on 29.5.1981. The violation of requirement of sub-section (4) of Section 13 was complete and beyond repair. The trial court was not in error in striking out the defence.

It may be pointed out that there remains yet another default during the life of the suit proceedings, i.e., of the month of April, 1982, the monthly rent thereof having been deposited in the court

only on 19.5.1982, i.e. beyond the period of 15 days prescribed by the statute within which the rent is required to be deposited. Although extension of time in respect of this default upto a period of 15 days as permissible under Sec.13(4) of the Act could have been considered but there has never been any prayer for extension of this time on the part of the tenant.

The off shot of above discussion is that the first part in Question No.1 as to whether the court committed any error in striking out the defence for not depositing the rent of the month of March, 1981 deserves to be answered in the negative. That is to say that striking out of the defence was not erroneous.

Similarly, in view of the ratio of Nasiruddin and others (supra), it is clear that the court neither had the power to extend the period so as to bring the default for the month of March, 1981 within statutory time nor the default could have been condoned. When the default could not have been condoned, the consequences of Section 13(5) follow and defence against eviction was required to be struck out. Question No.4 is also answered specifically in the negative. That is to say that learned courts were not in error in holding the provisions of Section 13(5) of the Act to be mandatory.

The matter could be viewed from yet another angle. So far the question of default is concerned, the default in payment of rent is itself a ground for eviction under Sec.13(1)(a) of the Act and a decree for eviction on its basis can always be granted. The only restriction on such a decree for eviction comes from Section 13(6) of the Act by virtue of which the court would not grant a decree for eviction on the ground of default, if the tenant complies with the requirements of Section 13(4) of the Act, i.e., of payment of the determined amount under Section 13(3) of the Act and so also continuous timely payment during pendency of the suit provided of course that such benefit has not previously been taken by the tenant. This benefit of `first default' could be granted only when there is a compliance of Sec.13(4) of the Act. Obviously, in the case of non-compliance of Section 13(4) of the Act, the benefit of "first default" could also not be granted and, therefore, whether defence against eviction is struck out or not, a decree for eviction would nevertheless follow, if ground of default is established.

It may be pointed out that in the present case, of course, the issue No.2 is not happily worded and not putting the parties to specific issue of default, but the parties have clearly understood the

case that default was a specific ground pleaded by the plaintiff which was sought to be met by the defendant essentially by pleading that the rate of rent was Rs.50/- per month and not Rs.85/- per month as claimed by the plaintiff. With the finding of fact that rent was Rs.85/- per moth, the tenant who claimed to have made payment at the rate of Rs.50/- per month only was clearly in default. Of course, the appellant has suggested the want of proper issue of default as a ground in the memo of appeal but this Court has not formulated any substantial question of law to that effect. The learned counsel has also not raised any such ground in support of the appeal and rightly so, as the parties have gone to the trial quite aware of the case they were required to meet. It may also be pointed out that the provisional determination of rent under Sec.13(3)) having been made was never in question and the determination was made only for the suit being one on the ground of default under Sec.13(1)(a) of the Act which is a condition precedent for applicability of Section 13(3) of the Act.

The default in payment of rent is clearly established on record and is made out by the very case set up by the defendant himself and learned courts were therefore not in error in granting the decree for eviction on this ground. The benefit of Sec.13(6) of the Act could not have been extended to the appellant-tenant for his having failed to

comply with the requirements of Sec.13(4) of the Act and having violated in timely payment of the rent at least on two occasions, as noticed above.

Viewed from any angle, the decree for eviction against the appellant on the ground of default remains valid and in accordance with law. The appeal, therefore, deserves to be dismissed.

In view of the aforesaid, the appeal fails and is dismissed. However, in the peculiar circumstances of this case, the parties are directed to bear their own costs through-out.

(DINESH MAHESHWARI),J.

MK